

## Notification of Time Limits

- There are statutory requirements for processing complaints in a timely manner. You must meet them or risk having your complaint dismissed for failure to meet filing requirements.
- Refer to the EEO Complaint Process flow chart for specific filing requirements.

## Burden of Production (Prima Facie Case)

- Federal law and DHS policy prohibit CBP from treating applicants or employees differently (disparate treatment) because of their membership in a protected class: race, color, religion, sex, national origin, age, disability (physical/mental), reprisal (for previous EEO activity), genetic testing, status as a parent, and sexual orientation.\*
- In situations where you believe you have received disparate treatment, you have the burden of producing evidence to establish a prima facie case of discrimination. This means that you must have enough evidence to raise the inference that your allegations are true.
- After you have established a prima facie case, CBP has the burden of producing evidence to show a legitimate, non-discriminatory reason for its actions, i.e., its actions were not motivated by discrimination.
- If CBP can show your claims are unfounded, then the burden of producing evidence shifts back to you.

## Reprisal

- You must establish a prima facie case of reprisal by showing:
  - You previously engaged in a protected activity or opposed unlawful discrimination;
  - CBP was aware of your activity;
  - You were subsequently adversely affected by some action of CBP;
  - Some reasonable connection exists between your activity and the adverse employment decision; or
  - You have direct evidence that shows discriminatory intent.

## Promotion

- Your failure to get a promotion may be unfair, but it might not be discriminatory. You must establish a prima facie case of discrimination that shows:
  - You are a member of a protected group under Federal law and DHS policy;
  - You applied and were qualified for a promotional opportunity that existed; and
  - Despite your qualifications, the promotion was awarded to an individual of a different protected group with lesser qualifications.

## Harassment

- Harassment violates Federal law and DHS policy if it is sufficiently severe/pervasive to alter the conditions of employment and create a hostile work environment. Harassment cases are judged using the reasonable person standard; that is, would a reasonable person find the conduct substantially affected the work environment.

- Discriminatory harassment is legally defined as verbal or physical conduct that denigrates or shows hostility or aversion toward an individual, or group of individuals, because of race, color, sex (sexual harassment), national origin, age, religion, disability, reprisal, genetic testing, sexual orientation, or status as a parent, and creates an intimidating, hostile, or offensive work environment or has the purpose or effect of unreasonably interfering with an individual's work performance.
- A hostile work environment claim requires showing of a pattern of offensive conduct. The key issues in proving harassment are frequency and severity. When considering the claim of a hostile environment, the court also considers the context in which the behavior was exhibited.
- In most instances, a single incident (includes isolated incidents) of offensive behavior may not create a hostile environment. If a coworker asks you for a date only one time, it may not be harassment. Use of a racial/ethnic epithet or slur on one occasion may not sufficiently affect working conditions to establish a claim of harassment.

## Pretext

- If CBP has rebutted your prima facie case, you must then show that CBP's stated reason was a mere mask to cover the discriminatory motive.
- To prevail, you must prove that CBP treated you differently from similarly situated employees in the same chain of command or in the same work unit or that CBP's explanation for the adverse action is false.

## Burden of Proof

- The evidence you presented in the prima facie context is not sufficient to win a judgement in your favor. You must present evidence to overcome CBP's rebuttal of your claims and convincingly demonstrate the existence of discrimination.
- The ultimate standard you must address to prevail is whether it is more likely than not that a violation of Federal law and DHS policy has occurred. You have the burden of persuasion to convince the judge or jury that the facts are true, i.e., prove your case.
- The final analysis will be made based on the preponderance of the evidence, which refers to the quality and reliability of the evidence and the credibility of the witnesses.

## Representation

- Throughout the EEO process, you have a right to the representative of your choice. At the hearing stage, CBP counsel will represent management.

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- \* Claims of genetic testing, status as a parent, and sexual orientation are not covered under the Civil Rights laws; however, limited administrative rights are available.

Questions about the EEO Complaint Process may be answered by contacting your local EEO Officer, or you may visit the CBP EEO website.



# The EEO Complaint Process

A publication of the Office of the Special Assistant to the Commissioner for EEO

For further information, contact your local EEO Officer or visit the CBP EEO website.



U.S. Customs and  
Border Protection



# STAGES IN THE EEO STATUTORY COMPLAINT PROCESS

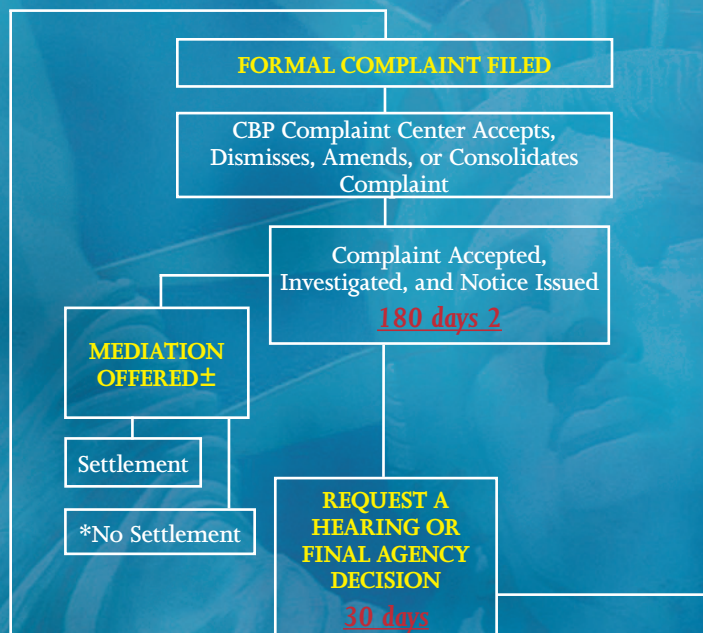
## Informal Stage

You must initiate contact with an EEO Officer within **45 days** of the date of the alleged discriminatory act or within **45 days** of the effective date of the personnel or employment action. This action begins the informal process for initiating your discrimination complaint. This diagram shows the filing requirements for each stage as outlined in 29 CFR Part 1614.



## Formal Stage

You must file a formal complaint within **15 days** of the Notice of Right to File a Discrimination Complaint.



\* If mediation is unsuccessful, processing of the complaint continues.

± Mediation during the Informal Stage and at the Formal Stage is voluntary and is conducted at the discretion of CBP.

If the investigation is not completed within 180 days, complainant may request a hearing.

*Days refer to calendar days.*

## Hearing Stage

